



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

December 21, 2015

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Byran Pitts**
Tax Registry No. 927362
Narcotics Borough Bronx
Disciplinary Case No. 2013-10409

Detective John Lindsey
Tax Registry No. 920507
Narcotics Borough Bronx
Disciplinary Case No. 2013-10410

The above named members of the service appeared before Assistant Deputy Commissioner Amy J. Porter on January 14 and March 25, 2015, and were charged with the following:

DISCIPLINARY CASE NO. 2013-10409

1. Said Detective Byran Pitts, while assigned to Narcotics Borough Bronx, on or about July 25, 2012, while on duty, after observing an arrestee swallow an object that said Detective believed to be a controlled substance, said Detective wrongfully failed to ensure that the arrestee was transported from the scene of the arrest directly to the nearest hospital facility. *(As amended)*

P.G. 210-04, Page 5 of 8

**PRISONERS REQUIRING
MEDICAL/PSYCHIATRIC
TREATMENT**

2. Said Detective Byran Pitts, while assigned to Narcotics Borough Bronx, on or about July 25, 2012, while on duty, used excessive force against Person A, in that he wrongfully punched Person A multiple times.

P.G. 203-11

USE OF FORCE

**DETECTIVE BYRAN PITTS
DETECTIVE JOHN LINDSEY**

**DISCIPLINARY CASE NO. 2013-10409
DISCIPLINARY CASE NO. 2013-10410**

DISCIPLINARY CASE NO. 2013-10410

1. Said Detective John Lindsey, while assigned to Narcotics Borough Bronx, on or about July 25, 2012, while on duty, after observing an arrestee swallow an object that said Detective believed to be a controlled substance, said Detective failed to ensure that the arrestee was transported from the scene of the arrest directly to the nearest hospital facility. *(As amended)*

P.G. 210-04, Page 5 of 8

**PRISONERS REQUIRING
MEDICAL/PSYCHIATRIC
TREATMENT**

2. Said Detective John Lindsey, while assigned to Narcotics Borough Bronx, on or about July 25, 2012, while on duty, after observing another member of the service committing an act of misconduct, to wit: using excessive force against an apprehended individual, failed to notify the Department.

P.G. 207-21, Pages 1 & 2

**ALLEGATIONS OF
CORRUPTION AND OTHER
MISCONDUCT AGAINST
MEMBERS OF THE SERVICE**

In a Memorandum dated June 25, 2015, Assistant Deputy Commissioner Amy J. Porter found Detective Pitts Guilty of Specification No. 1 and Not Guilty of Specification No. 2 in Disciplinary Case No. 2013-10409, and found Detective Lindsey Guilty of Specification No. 1 and Not Guilty of Specification No. 2 in Disciplinary Case No. 2013-10410. Having read the Memorandum and analyzed the facts of this matter, including the video evidence, I disapprove the Not Guilty findings and the penalties for both Detective Pitts and Detective Lindsey.

I have determined that Detective Pitts is Guilty of Specification Nos. 1 and 2 in Disciplinary Case No. 2013-10409 and Detective Lindsey is Guilty of Specification Nos. 1 and 2 in Disciplinary Case No. 2013-10410. Detective Pitts shall forfeit thirty (30) vacation days and be placed on one (1) year dismissal probation, as a disciplinary penalty, and Detective Lindsey shall forfeit twenty (20) vacation days, as a disciplinary penalty.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

June 25, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Byran Pitts
Tax Registry No. 927362
Narcotics Borough Bronx
Disciplinary Case No. 2013-10409

Detective John Lindsey
Tax Registry No. 920507
Narcotics Borough Bronx
Disciplinary Case No. 2013-10410

The above-named members of the Department appeared before me on January 14 and March 25, 2015, charged with the following:

Disciplinary Case No. 2013-10409

1. Said Detective Byran Pitts, while assigned to Narcotics Borough Bronx, on or about July 25, 2012, while on duty, after observing an arrestee swallow an object that said Detective believed to be a controlled substance, said Detective wrongfully failed to ensure that the arrestee was transported from the scene of the arrest directly to the nearest hospital facility. (*As amended*)

P.G. 210-04, Page 5 of 8 – PRISONERS REQUIRING MEDICAL/
PSYCHIATRIC TREATMENT

2. Said Detective Byran Pitts, while assigned to Narcotics Borough Bronx, on or about July 25, 2012, while on duty, used excessive force against Person A in that he wrongfully punched Person A multiple times.

P.G. 203-11 – USE OF FORCE

Disciplinary Case No. 2013-10410

1. Said Detective John Lindsey, while assigned to Narcotics Borough Bronx, on or about July 25, 2012, while on duty, after observing an arrestee swallow an object that said Detective believed to be a controlled substance, said Detective failed to ensure that the arrestee was transported from the scene of the arrest directly to the nearest hospital facility. (*As amended*)

P.G. 210-04, Page 5 of 8 – PRISONERS REQUIRING MEDICAL/
PSYCHIATRIC TREATMENT

2. Said Detective John Lindsey, while assigned to Narcotics Borough Bronx, on or about July 25, 2012, while on duty, after observing another member of the service committing an act of misconduct, to wit: using excessive force against an apprehended individual, failed to notify the Department.

P.G. 207-21, Pages 1 & 2 – ALLEGATIONS OF CORRUPTION AND OTHER
MISCONDUCT AGAINST MEMBERS OF THE SERVICE

The Department was represented by Jamie Moran, Esq., Department Advocate's Office. Respondent Pitts was represented by James Moschella, Esq. Respondent Lindsey was represented by Karen Middleton, Esq.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-10409

Respondent Pitts is found Guilty of Specification No. 1 and Not Guilty of Specification No. 2.

Disciplinary Case No. 2013-10410

Respondent Lindsey is found Guilty of Specification No. 1 and Not Guilty of Specification No. 2.

FINDINGS AND ANALYSIS

Background

It is undisputed that on July 25, 2012, Respondents were part of a narcotics enforcement team. They were conducting operations in drug prone locations. At approximately 1:30 p.m., they were driving in a minivan with team supervisor, Sergeant Aaron Edwards, when Respondent Lindsey observed what appeared to be a hand-to-hand narcotics transaction between two men subsequently identified as Individual 1 and Person A. Team members in another vehicle apprehended Individual 1 and recovered 26 glassines of heroin on him. Respondents and Edwards, meanwhile, approached Person A to effect his arrest. Before they reached him, they observed Person A move his hand to his mouth. They assumed that he was swallowing narcotics.

Respondent Lindsey and Edwards were the first to exit the minivan. They each grabbed one of Person A's arms. Person A tensed up and leaned forward. At that point, Respondent Pitts approached and punched Person A twice. The second punch caused Person A to fall to the ground. Person A continued to tense up, not wanting to give up his hands. Respondent Pitts stood over Person A and punched him in the face several times. During this period, Respondent Pitts repeatedly instructed Person A to "spit it out" and "give me your hands." The punching ceased once Respondent Lindsey was able to handcuff Person A was arrested for

criminal possession of a controlled substance, tampering with physical evidence, disorderly conduct, and resisting arrest.

Person A had a small, bleeding cut under his right eye. Respondent Lindsey retrieved a first aid kit to stop the bleeding. While Person A was upset about being arrested and may have even mentioned bringing a lawsuit, he did not complain at the scene about his injury. Respondents and Edwards remained at the scene for about 15 minutes before the prisoner van came to pick up Person A. Nobody suggested that Person A be taken to the hospital for narcotics ingestion. Respondents and Edwards continued with their scheduled enforcement activities.

Edwards believed that Respondent Pitts used excessive force against Person A, and he questioned him about it at a gas station after the encounter. Respondent Pitts told Edwards at the time that he used the force because Person A swallowed narcotics. Edwards did not report the incident. He subsequently forfeited a penalty of 25 vacation days after pleading guilty to Department charges of failing to report excessive force and failing to provide immediate medical attention for Person A.

Upon returning to the command at 8:00 or 8:30 p.m., Edwards noticed that Person A's eye was swollen. It was only at that point that Person A was taken to the hospital. As it turned out, according to Edwards, Person A had sustained a fractured orbital bone. [Department's Exhibit's (DX) 2A through D are photographs taken about eight hours after the arrest, showing Person A's injuries at that time.] As per Department procedure, Edwards notified the Internal Affairs Bureau that night about the injury.

The district attorney's office ultimately declined to prosecute Person A for insufficient evidence stating that Person A swallowed the evidence before the police could recover it. [Court Exhibit I is the affidavit in support of declining prosecution.]

Force Used Against Person A

Respondent Pitts is charged in Specification No. 2 with using excessive force against Person A in that he wrongfully punched Person A multiple times. Respondent Pitts has been assigned to Narcotics Borough Bronx since 2008. He has personally effected over 500 arrests and has assisted in thousands more. He has never before been accused of using excessive force.

The Assistant Department Advocate argued that Respondent Pitts wrongfully punched Person A to get the drugs out of his mouth. The Department called just one witness, Edwards, to support its case. While Edwards considered the force used by Pitts to be excessive, it is important to note that he was not focused on Respondent Pitts' actions throughout the encounter. Edwards admitted that he was looking around on the ground for drugs that Person A might have thrown. He continued to watch Respondents interact with Person A out of his peripheral vision, but from his position he was unable to see all that occurred while Person A was on the ground. Edwards also corroborated Respondents' testimony that Person A was resistant. Edwards perceived something in Person A's behavior that warranted some use of force, and the way that Person A tensed up when the officers grabbed his arms made Edwards believe that Person A was not going to be willingly handcuffed. Respondent Pitts may have told Edwards on the day of the incident that he used force to retrieve the drugs from Person A, but Edwards also heard Respondent Pitts order Person A while punching him to give up his hands. Edwards conceded that the force used was, at least in part, a response to Person A's noncompliance. Edwards suggested that Respondent Pitts could have used a lesser form of force, such as arm manipulation to gain compliance. He later conceded, however, that arm manipulation is a technique generally used in cases of passively resistant demonstrators, not in narcotics arrests or when dealing with

potentially violent felons. Edwards did not know if Respondent Pitts was even trained in manipulation techniques. At the time of the incident, Edwards had worked with Respondent Pitts for two years. He has personally observed Respondent Pitts effect hundreds of arrests, including arrests for violent felonies. Neither before nor since that day has he ever observed Respondent Pitts use force that he would call excessive.

The Department also relied on a video recording of the encounter [DX 1]. The video is unhelpful, as it only shows details not in dispute, such as Person A leaning forward and Respondent Pitts throwing punches. Unfortunately, the grainy video fails to elucidate any further facts. Once Person A goes to the ground, the minivan blocks virtually all view of him. As a result, any struggle that he put up goes unseen in the recording. While Respondent Pitts' actions may be startling to an uninformed viewer, the video fails to provide a complete picture of events. The video shows three members of the service aggressively handling a man of smaller stature, and this understandably creates a negative impression to the untrained eye. Because Person A's hands and body cannot be seen, however, the bulk of Respondent Pitt's actions are without context. The Department did not call Person A as a witness (or at the very least provide an out-of-court statement by Person A) to fill in any of the missing gaps.

Respondent Pitts, in contrast, credibly provided some of the context that is missing in the video. He explained that he was the last one to exit the minivan because he was fumbling with the door. By the time he got out, he saw what looked like Person A lurching forward and Respondent Lindsey jerking back and forth. This is consistent with Edwards and Respondent Lindsey's description of Person A tensing up to avoid being handcuffed. While it is possible that the lurching/leaning movement (which can clearly be seen on the videotape) was caused at least

in part by Respondent Lindsey moving Person A in order to get his hands behind his back, it is likely Respondent Pitts did not realize that from his position.

From Respondent Pitts' perspective, it looked like the situation was getting out of control and he feared that Person A may have swung at Respondent Lindsey. This is consistent with Edwards' testimony that he and Respondent Lindsey had not yet at that point gained full control of Person A. Respondent Pitts testified that he punched Person A to gain control and compliance. Respondent Pitts stated in a July 2013 official Department interview that his first two punches landed in Person A's face/shoulder area. A review of the video recording of the incident reminded him, however, that those punches were actually to the torso. This is consistent with the testimony of Department witness Edwards, who stated the punches were to the abdomen/chest area. [Respondent's Exhibit (RX) C is the relevant transcript excerpt from Respondent's 2013 interview.]

Respondents remembered Person A falling to the ground facedown. Although Edwards recalled Person A lying face up, he agreed it was possible that Person A hit his face on the ground. The striking of his face on the ground is certainly a possible explanation for the extent of Person A's injuries.

All witnesses agreed that, once on the ground, Person A continued to struggle with the officers. They could not gain control of Person A's hands, and they did not know if Person A was armed. Respondent Lindsey can be seen on the video running around Person A. Respondent Lindsey explained that he was running around trying to pull Person A's hand out, trying to get an optimal position where he could see what was in Person A's hand and handcuff him at the same time. Person A continued to keep his body stiff. It was apparent even to Edwards, who had already stepped away at that point, that Person A was not being compliant and

that Respondents were having difficulty handcuffing him. While it is impossible to tell from the video exactly how many times Respondent Pitts punched Person A while Person A was on the ground, Edwards testified that it was about five times and Respondent Pitts testified it was about eight times. In either case, the video showed that only about 12 seconds passed between the first punch and the last. Respondent Pitts explained that it was not his intent to injure Person A, but rather to gain compliance. This is consistent with the fact that, as mentioned above, he stopped all force once handcuffing Person A became possible.

Respondent Lindsey testified that he did not see any excessive force used. While it is possible that this testimony was colored by the fact that he and Respondent Pitts are friends, it is still true that he was in the best position to fully observe Respondent Pitts' actions during the encounter. Unlike Edwards, he was actively involved with Respondent Pitts and Person A throughout the incident.

Though Respondents were unaware at the time, Person A is a mentally ill individual. He was on several medications for schizophrenia and bipolar disorder. He also has an extensive criminal history. He has been arrested more than 20 times, including three prior arrests for resisting arrest. He has been convicted of 22 charges, including four felonies. One of the felonies was classified as violent. [RX A2 is Person A's criminal record. RX A 1 is a summary of the record, as prepared by the investigating officer. RX B is information on Person A's psychological conditions and medications.] Though unaware of this information, Respondent Pitts seemed to sense that with Person A he was dealing with an arrestee with atypical responses. Respondent Pitts testified, "We've made thousands of stops. All of us collectively have made thousands of arrests, and this one wasn't right. I don't know what it was at the time that made me react that way, but [there was] something about him." He continued, "If he's not complying

by what we're saying, and then after that you use physical force, which we're allowed to do. . . . I could have used pepper spray or my asp . . . [but] the pepper spray wouldn't work in that close of environment with everyone there [and] it would work probably more on us than the perp. And the expandable baton . . . I couldn't get it out at that point."

In the end, both Edwards' testimony and what little could be seen in the video turned out to be consistent with Respondents' version of the incident. In the absence of anything further, the Department failed to prove its case by a preponderance of the credible evidence, and the Court is left with the impression that Respondent Pitts used the level of force he reasonably believed was necessary to apprehend a noncompliant and potentially dangerous perpetrator during a fast-moving street encounter. Accordingly, he is found Not Guilty of this Specification.

Respondent Lindsey is charged in Specification No. 2 with observing the excessive force used against Person A and failing to notify the Department. Because the Court has found that the force was not excessive, Respondent Lindsey is found Not Guilty of failing to report it.

Failing to Transport Person A to the Hospital

Both Respondents are charged in Specification No. 1 with, after observing Person A swallow an object believed to be a controlled substance, failing to ensure that Person A was transported from the arrest scene directly to the nearest hospital facility.

Patrol Guide Procedure No. 210-04 mandates, "When a uniformed member of the service observes or suspects that a prisoner has ingested a narcotic or other dangerous substance, the prisoner will be transported from the place of arrest DIRECTLY to the nearest hospital facility."

This procedure was clearly triggered in this case. Martinez's hand movement led Respondents to believe that he was swallowing a controlled substance. In fact, this belief was the basis for charging Person A with tampering with evidence. Person A later informed investigators that the substance he put in his mouth was Xanax, but for all Respondents knew at the time it was heroin just purchased from Individual 1. Instead of taking Person A directly to the hospital to handle this suspected narcotic ingestion, however, Respondents resumed enforcement activities.

Respondent Lindsey even admitted in his testimony that he was aware of the procedure requiring officers to take someone who swallows something to the hospital. He conceded he could have made that suggestion to Edwards. The fact that Person A was not showing signs of intoxication did not relieve Respondents of their duty to seek medical intervention. Signs of intoxication can be delayed, and it is naturally best to treat these cases earlier rather than later.

Accordingly, Respondents are found Guilty of Specification No. 1.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Pitts was appointed to the Department on September 29, 2000. Respondent Lindsey was appointed on December 8, 1997. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

Both Respondents have been found Guilty of, after observing an arrestee swallow an object believed to be a controlled substance, failing to ensure that the arrestee was transported directly to the nearest hospital facility. Their failure to comply with P.G. No. 210-04 must be

considered in light of the fact that they knew their supervisor, Edwards, was aware of the circumstances and never directed that Person A be taken to the hospital. In *Disciplinary Case*

No 2010-1689 (Dec. 27, 2012), a fifteen-year police officer with no prior disciplinary record forfeited three vacation days for identical misconduct.

Accordingly, it is recommended that Respondents each forfeit three vacation days.

Respectfully submitted,

Amy Porter RM

Amy J. Porter

Assistant Deputy Commissioner Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE JOHN LINDSEY
TAX REGISTRY NO. 920507
DISCIPLINARY CASE NO. 2013-10410

In 2014, Respondent Lindsey received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He was rated 3.5 “Highly Competent/Competent” in 2012 and 3.0 “Competent” in 2013. He has been awarded seven medals for Excellent Police Duty, one for Meritorious Police Duty, and one Commendation. [REDACTED]

[REDACTED] Respondent Lindsey has no prior formal disciplinary record.

For your consideration.

Amy J. Porter
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE BYRAN PITTS
TAX REGISTRY NO. 927362
DISCIPLINARY CASE NO. 2013-10409

In 2013 and 2014, Respondent Pitts received an overall rating of 3.5 “Highly Competent/Competent” on his annual performance evaluation. He was rated 4.0 “Highly Competent” in 2012. [REDACTED]

[REDACTED] Respondent Pitts has no prior formal disciplinary record.

For your consideration.

Amy J. Porter
Assistant Deputy Commissioner – Trials